

CHAPTER 5.10

Adult Businesses

5.10.010 Short title.

This Chapter shall be known as the "Evans Adult Business Ordinance." (Ord. 944-94, 1994)

5.10.020 Purpose and intent.

The purpose and intent of this Chapter is to regulate sexually oriented businesses, to promote the health, safety and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or the Colorado Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene material. (Ord. 944-94, 1994)

5.10.030 Definitions.

The following, when used in this Chapter, shall have the meaning ascribed to it in this Section except where the context clearly indicates a different meaning:

Adult bookstore is a commercial establishment which:

1. Devotes a significant or substantial portion of its in-stock-trade or interior floor space to;
2. Receives a significant or substantial portion of its revenues from; or
3. Devotes a significant or substantial portion of its advertising expenditures to the promotion of:
 - a. the sale, rental or viewing (for any form of consideration) of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult business shall include, but not be limited to, adult motion picture theaters, nude entertainment, adult book stores, and other similar type businesses.

Adult motion picture theater means an enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas for observation by patrons therein.

Nude entertainment shall include any type of entertainment where a person appears in a state of nudity.

Specified anatomical areas includes any of the following:

1. Less than completely or opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola;
2. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified sexual activities include any of the following:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy.

State of nudity means when a person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals. (Ord. 944-94, 1994)

5.10.040 License required.

No adult business, service or entertainment establishment, as defined herein, shall be permitted within the City except as herein provided. It shall be unlawful for any person to conduct or establish any adult business, service or entertainment establishment until an adult business license has been secured from the City Clerk's office. (Ord. 944-94, 1994)

5.10.050 Application for license.

Applicants for a license to operate an adult business, service or entertainment establishment shall submit a written application to the City Clerk on forms containing the following information:

A. The name and legal residence address for voting purposes, business and residence telephone numbers of the applicant.

1. If a partnership, the name and address of each partner;

2. If a corporation, association or other organization, the names and addresses of the president, vice president, secretary, managing officer, each director and each shareholder who owns more than five percent (5%) of the outstanding shares of stock.

B. The trade name of the applicant.

C. Whether the applicant, any partners of a partnership or any officers, directors or any shareholders of a corporation holding more than five percent (5%) of the outstanding shares of stock, or any of their spouses, have any financial interest in any other adult entertainment establishment.

D. The age and date of birth of the applicant, of any partners, of any and all officers, of any stockholders of more than five percent (5%) of the shares of the corporation stock outstanding or of directors of the applicant if the applicant is a corporation.

E. If the applicant, any partners or any of the officers or stockholders holding more than five percent (5%) of the outstanding shares of the corporation has ever been convicted of any crime constituting a felony, or any crime not a felony, involving moral turpitude in the past five (5) years and, if so, a complete description of any such crime, including date of violation, date of conviction, jurisdiction

and any disposition, including any fine or sentence imposed, and whether terms of disposition have been fully completed.

F. Street addresses and legal description of the premises to be licensed.

G. Whether the premises are owned or rented and, if applicant has a right to legal possession of the premises, a copy of those documents giving such legal right.

H. If the applicant is a person doing business under a trade name, a copy of the trade name affidavit properly recorded. If the applicant is a corporation, a copy of authority to do business in Colorado, including articles of incorporation, trade name affidavit, if any, and last annual report, if any.

I. At least three (3) character references from individuals who are in no way related to the applicant or individual shareholders, officers or directors of a corporation and who are not or will not benefit financially in any way from the application if the license is granted and who have not been convicted of any felony, or any crime not a felony, involving moral turpitude in the past five (5) years. The City Clerk shall prepare forms consistent with the provisions of this Subsection for the applicant, who shall submit all character references on such forms.

J. Consent of access to business or employment records of the applicant, partners in a partnership, directors and officers of a corporation and, if a corporation, all shareholders holding more than five percent (5%) of the shares of corporate stock outstanding.

K. Each application for an adult business, service or entertainment establishment license shall be verified and acknowledged under oath to be true and correct by:

1. If the applicant is an individual, the individual;
2. If a partnership, by the manager or general partner;
3. If a corporation, by the president of the corporation; or
4. If any other organization or association, the chief administrative official.

L. Whether the applicant or any other individual listed pursuant to Subsection K above holds any other permits and/or licenses under this Chapter or other similar sexually oriented business ordinance from another city, county, or state and, if so, the names and locations of such other permitted businesses. (Ord. 944-94, 1994)

5.10.060 Persons prohibited as licensees.

A. No license provided for by this Chapter shall be issued to or held by:

1. An applicant who has not paid all required fees;
2. Any person who is not of good moral character;
3. Any corporation, and whose officers, directors or stockholders holding over five percent (5%) of the outstanding issued shares of capital stock are not of good moral character;
4. Any partnership or association, any of whose officers or members holding more than five percent (5%) interest therein are not of good moral character;

5. Any person employing, assisted by or financed in whole or in part by any person who is not of good moral character; or

6. Any applicant who is not qualified to hold and conduct business according to the laws of the United States, State of Colorado or City of Evans. (Ord. 944-94, 1994)

5.10.070 Investigation and issuance of license.

A. Upon receipt of an application, the City Clerk shall initiate a background investigation of the applicants and the information contained in the application. The City Clerk is authorized to investigate any fact that may be relevant or is believed to be relevant to determine the eligibility of the applicant for a license. The City Clerk is authorized to seek assistance of law enforcement agencies or such other assistance as the City Clerk believes necessary.

B. The City Clerk shall provide a notice of the results of the his or her investigation to the applicant. At any time, the City Clerk may supplement the investigation report with additional or newly found information.

C. The City Clerk shall either issue the license within forty-five (45) days of the date of receiving a complete application or schedule a hearing to commence within sixty (60) days of said date. Unless appealed to City Council, the decision of the licensing officer shall be binding on the applicant.

D. The City Clerk has the authority to refuse to issue any license as set forth herein for failure of the applicant to meet licensing requirements, subject to review by the City Council.

E. A copy of the decision of the City Clerk shall be sent to the applicant by first class mail, postage prepaid, at the address shown on the application.

F. No license shall be issued by the City Clerk after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures and equipment in place necessary to comply with the provisions of this Chapter and only after inspection of the premises has been made by the City Clerk to determine that the applicant has complied with the drawing and plot plan and detailed sketch for the interior of the building submitted with the application. Reasonable conditions and development standards may be required by the City Clerk.

G. Upon request of an applicant within fifteen (15) days after the effective date of the City Clerk's decision, or upon its own motion, the City Council may review the decision of the City Clerk or the City Council may, at its own discretion, take additional evidence as it believes necessary and issue such order and decision as to the Council appears proper. The City Council may attach reasonable conditions and development standards to any licensing decision. The decision of the City Council shall be considered the final decision of the City. (Ord. 944-94, 1994)

5.10.080 Term of license/renewal.

A. No license shall be issued until all fees have been received by the City. All licenses issued pursuant to the provisions of this Chapter shall be valid for only one (1) year from the date of issuance, unless revoked or suspended as provided herein.

B. A licensee under this Chapter shall be required to renew his or her license from year to year as a matter of course. The licensee must present the license for the previous year or satisfactory evidence of its loss or destruction to the City Clerk and pay the appropriate license fee. Application for renewal shall

provide the same information as was contained in the original application, except as waived by the City Clerk as being redundant. Should an application for renewal not be so made, the holder of the license shall have been deemed to waive renewal of the license.

C. All licenses not submitted for renewal at least forty five (45) days prior to the anniversary date of the license shall expire automatically on the anniversary date of issuance. The City Clerk may allow the delinquent licensee to renew after the said anniversary date for good and sufficient cause shown; however, a penalty of twenty five percent (25%) of the license fee shall be imposed and collected prior to renewal of the license. (Ord. 944-94, 1994)

5.10.090 License fees.

As a prerequisite to the issuance or renewal of a license under this Chapter, the licensee shall pay a license fee. Such fee is established by City Council by resolution. (Ord. 1124-98, 1998; Ord. 944-94, 1994)

5.10.100 Suspension and revocation of license.

A. The City Council may suspend or revoke any license issued under this chapter if it determines upon notice and hearing sufficient evidence that:

1. The licensee, his or her agents, officers, servants, or employees, maintain or continue to maintain a nuisance on the licensed premises.
2. The licensed premises are unsanitary as certified by the Weld County Health Department.
3. The licensed premises are unsafe as certified by the City of Evans Fire Marshal.
4. Violation of the ordinances of the City, the laws of the State or the United States of America has occurred.
5. The licensee, his or her agents, officers, servants or employees, on the licensed premises or elsewhere, while in the scope of employment, violate any conditions or development standards.

B. Emergency Suspension. If the City Clerk has reason to believe that a violation of this Chapter has occurred in a deliberate or willful manner or that the public health, safety and welfare require immediate action on the part of the City Clerk, the City Clerk may summarily suspend the license of an adult business, service or entertainment establishment or an adult business, service or entertainment establishment employee, and said notice of suspension shall contain notice that the adult business, service or entertainment establishment or adult business, service or entertainment establishment employee may request a hearing to contest the suspension. Should the adult business, service or entertainment establishment or the adult business, service or entertainment establishment employee, within ten (10) days after service of the suspension notice, request a hearing on the suspension, the City Clerk shall set a hearing date before the City Council as soon as practicable. No suspension shall exceed thirty (30) days unless prior to expiration of the thirty (30) day suspension a revocation proceeding is commenced. (Ord. 944-94, 1994)

5.10.110 Transfer of license - change of name.

A. No license granted by this Chapter shall be transferred.

1. Transfer shall include any assignment of any interest in the license to any person not identified on the application for the license.

2. A transfer of license includes a transfer of more than five percent (5%) of the outstanding shares of the corporation.

B. The licensee shall not conduct business under a name not submitted to the City Clerk prior to use. The licensee shall submit the legal authority to conduct business under an assumed name thirty (30) days prior to use. The City Clerk shall deny the use of the proposed name should the name be misleading, improper, or if the licensee has not shown proper legal authority to conduct business under such name or in violation of this Chapter or other law. (Ord. 944-94, 1994)

5.10.120 Miscellaneous regulations.

A. No one under twenty-one (21) years of age shall be admitted to an adult business, service or entertainment establishment, nor shall any employee, agent, servant or independent contractor working on the premises during hours when adult entertainment is being presented be under the age of twenty-one (21) years of age.

B. Adult entertainment shall only be available at adult business, service or entertainment establishments between the hours of 7:00 a.m. and 12:00 a.m., Monday through Saturday of each week.

C. An adult business, service or entertainment establishment shall be adequately buffered through the use of facade treatment, landscaping and fencing to minimize negative impacts on commercial uses, residential uses, public parks, churches or public or private schools certified or licensed by the State which are present in the vicinity. Buffering requirements shall be determined for the perimeter of the establishment on a case-by-case basis by reviewing the intensity of the establishment and comparing it to the type and location of surrounding land uses. For example, denser plantings and screening materials or more compatible facade treatment may be required between an adult business, service or entertainment establishment and a store or shop offering non-adult business goods and services at retail.

1. Issue at question. The basic issue for judging adequate buffering of adult businesses from other businesses in the vicinity shall be made without substantially interfering with the objectives of this Code, having due regard for the reasonable expectations of the applicant seeking the business license as well as those of other landowners in the neighborhood.

a. Process. Prior to action on a request for an adult business, service or entertainment establishment license, the City Council must have the recommendation of the Planning and Zoning Commission in regard to the adequate buffering of the adult businesses from other land uses which are present in the vicinity of the proposed use.

D. All outside lighting and signs shall be arranged, shielded and restricted so as to prevent negative impacts and any nuisance on adjacent streets, property commercial uses, residential uses, public parks, churches or public or private schools certified or licensed by the State in the area.

E. No adult business, service or entertainment establishment shall be operated or maintained within seven hundred fifty (750) feet of any school certified or licensed by the State, church property, residentially zoned property, residential designated areas of PUD plats, public park, cemetery, existing adult business or youth facility, measured in a straight line without regard to intervening structures or objects from the closest property line of such school or church property to the property line of the adult business, service or entertainment establishment.

F. Display of license. All licensees licensed under this Chapter shall display their license in a conspicuous place on the licensed premises in a clear, transparent cover or frame. The license shall be available for inspection at all times by the public. No person shall mutilate, cover, obstruct or remove a license so displayed.

G. Adult businesses may be licensed to operate in a B 1, Business; B-2, Shopping Center or M Manufacturing District. (Ord. 944-94, 1994)

5.10.130 Form of expression of opinion.

Nothing in this Chapter shall be construed to apply to the presentation, showing or performance of any play, drama, ballet or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher education or similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of a state of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise. (Ord. 944-94, 1994)

5.10.140 Violation; penalty.

A person who violates the requirements of this Chapter shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or imprisonment of not more than one (1) year, or by both such fine and imprisonment. (Ord. 944-94, 1994)